

Notice of Allowability

Application No.

10/849,089

Examiner

Rei-tsang Shiao, Ph.D.

Applicant(s)

NAZARE ET AL.

Art Unit

1626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed on 21 February, 2007.
2. ☒ The allowed claim(s) is/are 1-10.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date 02/22/07
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

DETAILED ACTION

1. This application claims benefit of the foreign application:
EUROPEAN PATENT OFFICE (EPO) 03011304.7 with a filing date 05/19/2003.
2. Amendment of claims 1-8 and 10 in the amendment filed on February 21, 2007, is acknowledged. Claims 1-15 are pending in the application.

Information Disclosure Statement

3. Applicant's Information Disclosure Statement, filed on February 22, 2007, has been considered. Please refer to Applicant's copy of the 1449 submitted herein.

Responses to Amendment

4. Since the variable D of formula (I) represents pyridyl thereof, the rejection of claims 1-8 and 10 under 35 U.S.C. 102(b), (a) or (e) or 103(a) has been overcome in the amendment filed on February 21, 2007.
5. Since the variable D of formula (I) represent pyridyl thereof, the rejection of claims 1-8 and 10 under obviousness-type double patenting over Nazar'e et al. US 6,906,084 has been overcome in the amendment filed on February 21, 2007.

EXAMINER'S AMENDMENT

6. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an

amendment, it MUST be submitted no later than the payment of the issue fee. Authorization for this examiner's amendment was given in a telephone interview with Jiang Lin on March 16, 2007. The application has been amended as follows:

Delete claims 11-15.

Reasons for allowance

7. The following is an examiner's statement of reasons for allowance:

Claims 1-8 and 10 are allowable. Claim 9 is previously withdrawn from consideration as a result of a restriction requirement, require all the limitations of an allowable claim. Pursuant to the procedures set forth in MPEP § 821.04(a), **the restriction requirement among inventions groups, as set forth in the Office action mailed on July 25, 2006, is hereby withdrawn** and claim 9 is hereby rejoined and fully examined for patentability under 37 CFR 1.104. In view of the withdrawal of the restriction requirement, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Claims 1-10 are neither anticipated nor rendered obvious over the art of record, and therefore are allowable. This invention relates to azaindole-derivatives as factor Xa inhibitors. The closest prior art is Nazar'e et al. US 6,906,084, discloses indole derivatives ad Factor Xa inhibitors. The difference between the reference and instant claims is that instant claimed compounds of formula (I) have not been found. A suggestion for modification of above reference to obtain the instant compounds of formula (I) has not been found. Claims 1-10 are allowed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance".

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Shiao whose telephone number is (571) 272-0707. The examiner can normally be reached on 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane can be reached on (571) 272-0699. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

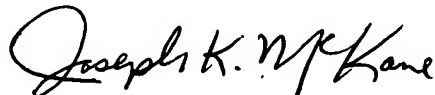
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

Art Unit: 1626

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Joseph K. McKane
Supervisory Patent Examiner
Art Unit 1626



Robert Shiao, Ph.D.
Patent Examiner
Art Unit 1626

March 21, 2007